

Message Text

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ACTION EA-12

INFO OCT-01 ISO-00 HA-05 PM-05 NSC-05 SP-02 SS-15

CIAE-00 INR-07 NSAE-00 L-03 H-01 DODE-00 PRS-01

/057 W

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P R 280900Z NOV 77

FM AMEMBASSY MANILA

TO SECSTATE WASHDC PRIORITY 8450

INFO CINCPAC

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CINCPAC FOR POLAD

E. O. 11652: NA

TAGS: SHUM, RP

SUBJECT: AQUINO CASE: MEDIA EMPHASIZES APPEAL PROCEDURE

REF: MANILA 18681

1. SUMMARY: ORIGNIAL LOCAL MEDIA REPORTS OF AQUINO DEATH SENTENCE MADE SCANT MENTION OF APPEALS PROCEDURES. THE NEXT DAY, MANILA PRESS TRIED VALIANTLY TO EXPLAIN MANDATORY REVIEW PROCESS. HOWEVER, JUDGE ADVOCATE GENERAL, IN EXPLAINING THE RELEVANT DECREE, ADMITTED THERE MIGHT NOT BE TIME TO SET UP NEWLY-REQUIRED COURT OF MILITARY APPEALS TO REVIEW AQUINO CASE, IN WHICH EVENT HE WOULD SUBMIT IT TO DEFENSE SECRETARY FOR REVIEW. CAUTIOUS EDITORIALISTS AND COLUMNIST VALENCIA, REACTING TO OVERSEAS ALARM, ALSO EMPHASIZED FACT THAT AQUINO IS STILL FAR FROM EXECUTION. END SUMMARY.

2. INITIAL REPORTING IN LATE EDITIONS OF NOVEMBER 26 MANILA PRESS OF THE GUILTY VERDICT AND THE DEATH SENTENCE FOR FORMER SENATOR AQUINO (WHOM DAILY EXPRESS CALLED "THE LIMITED OFFICIAL USE

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44-YEAR-OLD FORMER PRESIDENTIAL HOPEFUL") BARELY MENTIONED APPEALS PROCEDURE. DAILY EXPRESS SAID NOTHING ABOUT IT; TIMES JOURNAL DESCRIBED PRESIDENTIAL DECREE 1165 IN FINAL THREE PARAGRAPHS OF LONG STORY; BULLETIN TODAY STORY'S FIFTH PARAGRAPH SAID SIMPLY, "THE CASE WILL NOW GO BEFORE THE BOARD OF MILITARY REVIEW. THEN IT WILL BE ELEVATED TO THE SUPREME COURT."

3. NOVEMBER 27 NEWSPAPERS, HOWEVER, ALL EMPHASIZED FACT THAT AQUINO CASE IS UNDER MANDATORY APPEAL. DAILY EXPRESS REPORTED THAT PRESIDENT MARCOS TOLD NEWSMEN AFTER A SPEECH TO VETERANS ASSOCIATION: "SINCE THE CASE GOES TO THE SUPREME COURT FOR AUTOMATIC REVIEW AND IS THEREFORE SUB JUDICE, I CANNOT MAKE ANY COMMENT ON THE CASE AT THIS TIME." HE DID ADMIT, THOUGH, THAT "HE DID NOT EXPECT THE PROCEEDINGS TO END SO QUICKLY.

4. OTHER NEWSPAPERS NOVEMBER 27 REPORTED PRESS BRIEFINGS BY ARMED FORCES JUDGE ADVOCATE GENERAL BG HAMILTON DIMAYA. HE DESCRIBED APPEALS PROCEDURE IN DETAIL; HE ALSO ANNOUNCED FOR THE FIRST TIME THAT PD 1165 (REFTEL) HAD BEEN SUPERSEDED BY PD 1199, SIGNED SEPTEMBER 21, 1977, WHICH NOW GOVERNS APPEALS PROCEDURE. PD 1199 SETS UP THE COURT OF MILITARY APPEALS (COMA), COMPOSED OF NINE LAWYERS, WHICH AUTOMATICALLY REVIEWS ALL CASES WITH PENALTIES ABOVE A SIX-YEAR JAIL TERM AND THEN, IF THE VERDICT IS CONFIRMED, PASSES THEM TO THE SUPREME COURT. DIMAYA ADMITTED, HOWEVER, THAT THE COMA HAS NOT YET BEEN CREATED. UNDER PD 1199'S TRANSITORY PROVISIONS, IF COMA HAS NOT BEEN SET UP BY THE TIME HE FINISHES REVIEWING THE CASE, HE SAID, HE WILL SEND THE RECORDS TO DEFENSE SECRETARY ENRILE FOR REVIEW BY THE MILITARY REVIEW BOARD OF THE DEPARTMENT OF NATIONAL DEFENSE. (COMMENT: EMBASSY HAS JUST OBTAINED COPY OF PD 1199 AND LIMITED OFFICIAL USE

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WILL DESCRIBE IT IN SEPTTEL.)

5. DAILY EXPRESS COLUMNIST TEODORO VALENCIA, OBVIOUSLY REACTING TO EXTERNAL REACTION, DEVOTED MUCH OF HIS COLUMNS NOVEMBER 27 AND 28 TO THE AQUINO RULING. ON NOVEMBER 27 HE EMPHASIZED THAT THE MILITARY TRIBUNAL'S DECISION IS "JUST ONE STEP IN THE LEGAL PROCEEDINGS." HE REPORTED MANY CALLS FROM "NEWSMEN FRIENDS" IN WASHINGTON. HE HAD TOLD THEM, HE SAID, "THAT UNDER OUR MARTIAL LAW, THE TRIO WON'T BE SHOT TOMORROW. THEY'LL GET A CHANCE IN THE PRESIDENTIAL REVIEW BODY (SIC) AND THE SUPREME COURT. EVEN UNDER AN EXTREME CASE OF AFFIRMATION OF THE FINDINGS, IT WON'T FOLLOW THAT THE PENALTY OF DEATH BY MUSKETRY WOULD BE CONFIRMED TOO. AND EVEN IN SUCH AN EVENTUALITY, THERE ARE MANY OTHER WAYS TO SAVE THEIR LIVES...THE PRESIDENT STILL HAS THE OPTION TO GRANT A COMMUTATION, AN ABSOLUTE PARDON OR WHATEVER HE WISHES TO DO....WHEN YOU COME DOWN TO IT, IT WAS BEST THAT THE HEARINGS ENDED SO THE CASE CAN MOVE TO ITS FINAL RESOLUTION....NOW, IT IS CLEAR THAT THE

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CINCPAC FOR POLAD

CASE MUST BE DECIDED FINALLY AS SOON AS POSSIBLE TO
DISSIPATE THE ANXIETIES OF THE PEOPLE." VALENCIA CHANGED
HIS TUNE SOMEWHAT ON NOVEMBER 28, DECIDING THAT GIVEN ALL
THE REVIEW MECHANISMS, "THIS CASE CAN DRAG ON FOR ANOTHER
TEN YEARS WITH THE ACCUSED ALIVE AND HEALTHY. PERHAPS
20 YEARS." VALENCIA WENT ON TO DESCRIBE THE REVIEW POWERS
OF THE SUPREME COURT: "UNLESS ALL THE JUSTICES PARTICIPATING
AND VOTING CONFIRM THE SENTENCE OF DEATH BY MUSKETRY, THAT
DECISION IS AUTOMATICALLY MODIFIED TO MEAN LIFE IMPRISONMENT,
UNLESS THE SUPREME COURT INDICATES THE PROPER PENALTY. IF
THE SUPREME COURT FINDS ANY FAULT IN THE WAY THE TRIAL WAS
CONDUCTED, THE COURT CAN ORDER A NEW TRIAL AND REMAND THE
CASE TO ANY COURT IT CHOOSES. THE SUPREME COURT CAN ALSO
ACQUIT THE ACCUSED. "EVEN IF THE APPEALS BODY MODIFIES THE
MILITARY TRIBUNAL DECISION AND REMOVES THE DEATH PENALTY,
ANY OF THE THREE CONVICTED INDICTEES CAN STILL GO TO THE
SUPREME COURT FOR CERTIORARI. A CLAIM OF MISTRIAL CAN BE
FILED WITH THE SUPREME COURT, IN WHICH CASE THE PROCEDURES
USED BY THE MILITARY TRIBUNALS WILL BE THE MAIN ISSUE.
ALSO, THE ADMISSIBILITY OF THE TESTIMONY OF DEAD WITNESSES."

6. OTHER COLUMNISTS HAVE COMPLETELY AVOIDED COMMENTING ON
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THE AQUINO CASE. THE FEW NEWSPAPERS EDITORIALS HAVE, LIKE
VALENCIA, STRESSED THE APPEALS MECHANISM. BULLETIN TODAY

INSISTED THAT: "DESPITE THE SIGNIFICANCE OF THE VERDICT, IT IS NOT FINAL. HENCE COMMENTING ON THE MERITS OF THE CASE IS NOT ADVISABLE. FOR HERE THE COURTS ARE TRADITIONALLY GIVEN AS MUCH FREEDOM AS POSSIBLE TO ABJUDICATE CASES WITHOUT OUTSIDE INTERFERENCE." (SIC) SIMILARLY, DAILY EXPRESS NOVEMBER 28 NOTED THAT THERE IS "THE NATURAL TENDENCY OF MANY OBSERVERS TO TRY TO INTERPRET THE TRIBUNAL DECISION VIS-A-VIS THE POLITICAL CLIMATE, IMAGINED OR FACTUAL. BUT WHAT ESCAPES MANY IS THAT THE VERDICT LAST FRIDAY CONSTITUTES MERELY A PART OF A JUDICIAL PROCESS WHICH MUST HAVE TO EXTEND TO THE SUPREME COURT OR EVEN THE PRESIDENT BEFORE SUCH A DECISION IS MADE FINAL AND EXECUTORY. ...WHAT SHOULD BE KEPT IN MIND IS THAT THE TRIAL OF AQUINO AND THE OTHERS IS STILL GOING THROUGH THE DUE PROCESS AND THAT THE OUTCOME IS UNKNOWN TILL AFTER ALL POSSIBLE REMEDIES HAVE BEEN EXHAUSTED. SOME QUARTERS HAVE EVEN EXPRESSED THE BELIEF THAT THE DEATH BY MUSKETRY VERDICT IS CERTAIN TO BE RESERVED."

7. NOVEMBER 28 NEWSPAPERS CARRIED NO LOCAL STORIES ABOUT THE AQUINO CASE. BULLETIN TODAY'S LEAD STORY, HOWEVER, CARRIED HEADLINE: "U.S. GOVT. DISTURBED OVER AQUINO VERDICT," WITH WASHINGTON-DATeline UPI REPORT OF DEPARTMENT SPOKESWOMAN'S STATEMENT THAT "WE ARE DISTURBED BY THE SENTENCE MR. AQUINO RECEIVED." BULLETIN ALSO RAN RELATED HONOLULU UPI REPORT OF MAYOR FRANK FASI'S APPEALS TO PRESIDENT MARCOS AND PRESIDENT CARTER, LONDON REUTER REPORT OF SUNDAY TIMES EDITORIAL, AND WASHINGTON UPI REPORT OF MANGLAPUS STATEMENT THAT MILITARY COURTS LACK JURISDICTION.

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Message Attributes

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Disposition Date: 22 May 2009
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